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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/654,118

09/03/2003

Tim A. Fischell

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27777 7590 03/01/2007  
PHILIP S. JOHNSON  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/654,118

Applicant(s)

FISCHELL ET AL.

Examiner

Walter B. Aughenbaugh

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1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1 and 10 in the Amendment filed December 1, 2006 (Amdt. C) have been received and considered by Examiner.
2. The semicolon in line 2 of claim 1 in Amdt. C and the comma in line 8 of claim 1 in Amdt. C should not be underlined because these punctuation marks were added to claim 1 in the Amendment filed September 6, 2006 (Amdt. B).
3. Applicant's cancellation of claim 4 in Amdt. C has been acknowledged by Examiner. Applicant states that "claim 4 is now canceled" on page 6 of Amdt. C.
4. The text of claim 4 should not appear in Amdt. C since claim 4 is canceled in Amdt. C. 37 CFR 1.121(c)(4)(i). Applicant states that "claim 4 is now canceled" on page 6 of Amdt. C.

### ***WITHDRAWN OBJECTIONS***

5. The objection to the specification made of record in paragraph 11 of the previous Office Action mailed September 15, 2006 has been withdrawn due to Applicant's replacement of "therebetween" with --therewithin-- in claims 1 and 10 in Amdt. C.

### ***WITHDRAWN REJECTIONS***

6. The 35 U.S.C. 112, first paragraph rejection of claims 1 and 10 made of record in paragraph 13 of the previous Office Action mailed September 15, 2006 has been withdrawn due to Applicant's replacement of "therebetween" with --therewithin-- in claims 1 and 10 in Amdt. C.
7. The 35 U.S.C. 112, second paragraph, rejection of claim 4 that was repeated in paragraph 5 of the previous Office Action mailed September 15, 2006 has been withdrawn due to

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Applicant's cancellation of claim 4 in Amdt. C. Applicant states that "claim 4 is now canceled" on page 6 of Amdt. C.

***REPEATED REJECTIONS***

***Claim Rejections - 35 USC § 112***

8. The 35 U.S.C. 112, second paragraph, rejection of claim 1 that was repeated in paragraph 5 of the previous Office Action mailed September 15, 2006 has been repeated for the reasons previously made of record, although the basis for rejection regarding the word "therebetween" has been withdrawn due to Applicant's replacement of "therebetween" with --therewithin-- in claim 1 in Amdt. C; Applicant's replacement of "therebetween" with --therewithin-- in claim 1 in Amdt. C suitably addresses all of the issues raised in paragraph 5 of the previous Office Action mailed September 15, 2006, but Applicant has not addressed the following basis for rejection that was made of record in paragraph 14 of the Office Action mailed May 10, 2006: the proximal-most circumferential set of strut members cannot be "at the distal end of the stent" since the distal-most circumferential set of strut members is at the distal end of the stent. Paragraph 14 of the Office Action mailed May 10, 2006.

***Claim Rejections - 35 USC § 102***

9. The 35 U.S.C. 102 rejection of claims 1-3 and 5-8 that was repeated in paragraph 6 of the previous Office Action mailed September 15, 2006 has been repeated for the reasons previously made of record and for the following reason that addresses the amendment made in claim 1 in Amdt. C: each of the openings that are located vertically between each consecutive pair of the five connecting elements between item 12 and item 14 as shown in Fig. 1 of Vrba and that extend horizontally into both item 12 and the furthest left column of item 14 are enclosed by the

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closed perimeter of a spoke, where each spoke consists of the respective portions of item 12, each respective consecutive pair of the five connecting elements between item 12 and item 14 and the respective portions of item 14 that enclose each of the openings, as claimed.

10. The 35 U.S.C. 102 rejection of claims 10-13 and 15 that was repeated in paragraph 7 of the previous Office Action mailed September 15, 2006 has been repeated for the reasons previously made of record and for the following reason that addresses the amendment made in claim 10 in Amdt. C: since Lam teaches that the radiopaque markers 35 are “formed in or attached to” the stent of Lam (col. 6, lines 16-17) and “arrange[d] upon or within” the stent of Lam (col. 6, lines 24-25), the closed perimeter of each of the spokes of Fig. 3 of Lam (each pedal 27 is a spoke) encloses an opening in the embodiment where the radiopaque markers 35 are “formed in”/“arrange[d] within” the spokes (pedal 27) of Lam (col. 6, lines 16-28 and Fig. 3): each of the spokes necessarily comprises an opening for a radiopaque marker 35 to be “formed in”/“arrange[d] within” such that the radiopaque marker 35 can be “formed in”/“arrange[d] within” that opening.

***Claim Rejections - 35 USC § 103***

11. The 35 U.S.C. 103 rejection of claims 16 and 17 that was repeated in paragraph 8 of the previous Office Action mailed September 15, 2006 has been repeated for the reasons previously made of record and for the reason provided above that addresses the amendment made in claim 10 in Amdt. C.

12. The 35 U.S.C. 103 rejection of claim 9 that was repeated in paragraph 9 of the previous Office Action mailed September 15, 2006 has been repeated for the reasons previously made of

record and for the reason provided above that addresses the amendment made in claim 1 in Amdt. C.

13. The 35 U.S.C. 103 rejection of claim 14 that was repeated in paragraph 10 of the previous Office Action mailed September 15, 2006 has been repeated for the reasons previously made of record and for the reason provided above that addresses the amendment made in claim 10 in Amdt. C.

***Response to Arguments***

14. Applicant's arguments presented on page 6 of Amdt. C regarding the 35 U.S.C. 112, second paragraph, rejection of claim 1 have been fully considered but are not persuasive.

Applicant's replacement of "therebetween" with --therewithin-- in claim 1 in Amdt. C suitably addresses all of the issues raised in paragraph 5 of the previous Office Action mailed September 15, 2006, but Applicant has not addressed the following basis for rejection that was made of record in paragraph 14 of the Office Action mailed May 10, 2006: the proximal-most circumferential set of strut members cannot be "at the distal end of the stent" since the distal-most circumferential set of strut members is at the distal end of the stent. Paragraph 14 of the Office Action mailed May 10, 2006.

15. Applicant's arguments presented on page 6 of Amdt. C regarding the 35 U.S.C. 102 rejections of claims 1 and 10 have been fully considered but are not persuasive.

In regard to claim 1, each of the openings that are located vertically between each consecutive pair of the five connecting elements between item 12 and item 14 as shown in Fig. 1 of Vrba and that extend horizontally into both item 12 and the furthest left column of item 14 are enclosed by the closed perimeter of a spoke, where each spoke consists of the respective portions

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of item 12, each respective consecutive pair of the five connecting elements between item 12 and item 14 and the respective portions of item 14 that enclose each of the openings, as claimed.

In regard to claim 10, since Lam teaches that the radiopaque markers 35 are “formed in or attached to” the stent of Lam (col. 6, lines 16-17) and “arrange[d] upon or within” the stent of Lam (col. 6, lines 24-25), the closed perimeter of each of the spokes of Fig. 3 of Lam (each pedal 27 is a spoke) encloses an opening in the embodiment where the radiopaque markers 35 are “formed in”/“arrange[d] within” the spokes (pedal 27) of Lam (col. 6, lines 16-28 and Fig. 3): each of the spokes necessarily comprises an opening for a radiopaque marker 35 to be “formed in”/“arrange[d] within” such that the radiopaque marker 35 can be “formed in”/“arrange[d] within” that opening.

### *Conclusion*

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh

02/24/07

WBA



JENNIFER MCNEIL  
SUPERVISORY PATENT EXAMINER

2/26/07